Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 5, 1992

Mr. Roger Lee
Gibson and Hotchkiss, L.L.P.
912 City National Building
807 8th Street
Wichita Falls, Texas 76301

OR92-441

Dear Mr. Lee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15307.

The Wichita Falls Independent School District (the "district"), which you represent, has received a request for certain information concerning school district administrators. Specifically, the requestor seeks access to "those documents in the school district's custody which reflect the salaries and other compensation paid to, or on behalf of, vice principals, principals and other administrative officials . . . [to include] salaries, tax deferred annuities, any other form of tax shelter, certificates of deposit, insurance policies and any other non-salary compensation." You do not object to release of some of the requested information, including the names, salaries, and titles of school district administrators. You claim, however, that some information in the representative documents submitted to us for review is excepted from required public disclosure by section 3(a)(2) of the Open Records Act.

Section 3(a)(2) excepts from required public disclosure "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court stated that the test to be applied under section 3(a)(2) was that articulated by the Texas Supreme Court for common-law privacy in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the two-prong test articulated in the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing *and* is of no legitimate concern to the public.

This office has previously held that personal financial information relating to an individual ordinarily satisfies the first requirement of the test for common-law privacy, that the information be highly intimate or embarrassing, "but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body." Open Records Decision No. 600 (1992) at 9; *see also* Open Records Decision No. 373 (1983). Given the public's legitimate interest in the essential or basic facts about a financial transaction between a governing body and an individual, this office has held public information indicating an employee's decision to participate in a group insurance program and his decision to enroll his spouse or dependents in the group program. In reaching that decision, this office referred to the funding in whole or part by the state of the employee's or his family members' participation in the group insurance program. Open Records Decision No. 600 at 9-10. In contrast, this office has protected from disclosure information concerning an employee's participation in purely optional insurance and investment programs funded generally by the employee. *Id.* at 10 (protecting employee's participation in optional life, accident, or disability programs); Open Records Decision No. 545 (1990) (protecting from disclosure employee's decision to invest a portion of his salary in a tax-deferred retirement plan, his choice of investment products, and the amount invested). Each financial transaction, however, must be closely examined, because "special circumstances may make private facts a matter of legitimate public concern." Open Records Decision No. 545 at 4-5 (noting no special facts justified public disclosure of the personal investment information at issue there).

We turn first to the sample contract with the district's superintendent and the amendments to that contract forwarded to us for review. The contract and the accompanying amendments concern the employment by the school board of the district's superintendent. As a general rule, the public has a legitimate interest in the terms of contracts that involve the expenditure of district funds, including employment contracts executed by the board for the provision of administrative services; and thus, the terms of such contracts would not be excepted from disclosure under the two-prong test for common-law privacy. *See generally* Open Records Decision No. 15 (1974). We understand, however, that you are concerned in particular about subparts (c) and (d) of part 4 of the sample contract. Part 4 of the contract describes the fringe benefits to be provided the superintendent in addition to the base salary of $77,500 described in part 2 of the contract.

Subpart (c) of part 4 imposes several duties on the board with regard to insurance coverage to be provided the superintendent or his family. Those duties involve the board's payments of premiums for the superintendent's participation in the district's group health and disability programs as well as for the purchase of a term life insurance policy to be selected by the board. Subpart (c) includes only essential facts concerning the board's duties to expend district funds and provide certain insurance coverage as a fringe benefit in addition to the superintendent's base salary. The public has a legitimate interest in the basic facts concerning fringe benefits provided to governmental employees with district funds. Thus, you may not withhold subpart (c) pursuant to section 3(a)(2).

Subpart (d) of part 4 states that the district is obligated to pay annually an amount not to exceed $9,500 to the superintendent. We are advised that this amount is part of the total compensation paid the superintendent. The contract also refers to this amount as additional consideration paid to the superintendent for his services. *See* part 2 (containing agreement to pay superintendent yearly base salary of $77,500 plus fringe benefits described in part 4). The public has a legitimate interest in the total monetary compensation (whether taxable or not) provided a governmental employee. Absent disclosure of the amount stated in subpart (d), the public cannot determine the total compensation provided the superintendent. Consequently, the amount stated in subpart (d) is an essential fact, and you must release it to the requestor. Besides containing an essential fact necessary to the determination of total compensation to be paid the superintendent, subpart (d) includes severable information revealing a personal investment decision made by the superintendent. This information, which we have marked, satisfies the first prong of the common-law privacy test, that information be highly intimate or embarrassing. We also conclude that it satisfies the second prong of the test since no evidence of special circumstances has been presented that indicates a legitimate public interest in the superintendent's personal investment decision. You must therefore withhold the marked information in subpart (d).

The accompanying amendments that either modify the term of the contract, the superintendent's base salary, or miscellaneous fringe benefits such as vacation time or auto allowances must be released since the public has a legitimate interest in the essential facts concerning all financial and other contractual benefits provided to governmental employees. Amendment I, effective January 1, 1988, also includes an agreement between the superintendent and the board changing the amount to be paid pursuant to subpart (d) of part 4 and an agreement designating part of the superintendent's base salary for deposit in the district's cafeteria plan. As stated

above the amount provided as additional compensation pursuant to subpart (d) of part 4 is of legitimate interest to the public, and accordingly, you must release the changed amount effective as of January 1, 1988. Again as indicated above, we are unaware of any special circumstances justifying the release of the superintendent's personal investment decision with regard to the subpart (d) amount; thus, we have marked the portion of the amendment that you must withhold related to that personal investment decision. Furthermore, we are also unaware of any special circumstances justifying the release of the agreement in the amendment designating a portion of the superintendent's base salary for deposit in the district's cafeteria plan. The designated portion is part of the superintendent's base salary, and thus, release of the amount designated for deposit in the cafeteria plan is not necessary for determination of total compensation provided by the district. The designated portion also reflects a personal financial decision. Consequently, we have marked the part of the amendment that you must withhold related to that personal financial decision.

We now turn to the document entitled "Endorsement Method Universal Life Split Dollar Plan." This contract was executed in accordance with subpart (c) of part 4 of the contract discussed above. All of the terms of this contract are of legitimate interest to the public, and therefore, must be released in full. Part II of the contract provides that the district owns the insurance policy and that it alone may borrow or withdraw on the policy cash values, while part IV of the contract obligates the district alone to make the premium payments. In accordance with subpart (c) of part 4, these premium payments are in addition to the superintendent's base salary. Finally, part VI, which concerns the division of death proceeds if premium payments are made as required by part IV, states that the district receives an amount equal to the policy's cash value on the insured's death, while the insured's beneficiaries receive the amount, if any, in excess of that value. The remaining provisions of the contract describe other obligations or rights of the parties to the contract. No provision in the contract indicates that this contract represents a purely personal financial or retirement decision. The public has a legitimate interest in contracts executed between the district and its employees, especially if those contracts represent assets owned by the district and purchased with its funds. Consequently, this contract may not be withheld under the two-prong test articulated in the *Industrial Foundation* case.

We turn next to the whole life policy dated July 1, 1987 submitted to us for review. We note that the insured is the superintendent, while the owner of the policy as well as the direct beneficiary of the policy is the school district. You

advise, however, that this policy represents the personal financial decision of the superintendent with regard to various deferred compensation options and that the district is shown as the temporary owner and beneficiary purely for federal tax purposes. *See* Life Insurance Application at p. 3 (Supplement to the policy). Assuming that the premiums for the policy constitute deferred compensation and are paid by the superintendent from his base salary or are treated as paid by him from additional compensation received under part 4 of his contract of employment, you must withhold the whole life policy and all accompanying application and supplementary information since it will reflect only the personal financial decision of the superintendent. If not, the public will have a legitimate interest in this policy and the accompanying documents, and you will have to release the policy and all of the accompanying documents except the marked portions concerning the insured's medical history since that history satisfies the two-prong test for common-law privacy, and, absent special circumstances not shown here, is of no legitimate interest to the public.

We now turn to the document entitled "Deferred Compensation Plan Wichita Falls Independent School District." Only the last page of this document entitled "Joinder Agreement" may be withheld since it documents a personal investment decision made by the superintendent with regard to either his base salary or amounts paid as additional compensation under part 4 of his employment contract, and the public, absent special circumstances not shown here, has no legitimate interest in a purely personal financial decision. The remainder of the document evidences the district's master agreement under which certain of its management employees may defer a portion of their salary. Since the master agreement does not reveal any personal financial information with regard to employees who execute joinder agreements to obtain the benefits permitted under it, it may not be withheld under the two-prong test for common-law privacy.

We next turn to the sample contract entitled "Administrator's Contract." Attached to that contract is a document entitled "Proposal for Wichita Falls Independent School District" and documents summarizing the disability policies provided school administrators. All terms of the "Administrator's Contract" must be released, including the amount indicated for other compensation, which includes the disability policy premium paid by the district in addition to the administrator's base salary, travel allowance, and health insurance premiums, since those terms are of legitimate interest to the public. With regard to the document entitled "Proposal for Wichita Falls Independent School District," you must release the complete document since the public has a legitimate interest in the persons receiving benefits

paid for with district funds, the total cost for such benefits, and the general terms on which those benefits are provided. You must also release the documents summarizing the disability policies provided school administrators since they contain only general information concerning the nature of those policies.

We turn last to the deferred variable annuity policy and accompanying documents. Again, assuming that the premiums for this policy constitute deferred compensation and are paid from either the superintendent's base salary or amounts treated as additional compensation under part 4 of his employment contract, you must withhold the policy and the accompanying documents. If not, the public will have a legitimate interest in the additional benefits provided the superintendent through the purchase of this policy with supplemental district funds, and the policy and the accompanying documents will have to be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-441.

Yours very truly,

Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/lmm

Ref.: ID# 15307
ID# 15560
ID# 16161
ID# 16240

Enclosures: Open Records Decision Nos. 600, 545, 373

cc: Mr. John M. Rogers
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(w/o enclosures)